

## **REMARKS**

### **Status of the Claims**

Claims 1-9, 11-20 and 23-27 are presently pending, claim 22 having been canceled herein. Claims 10 and 21 were previously cancelled. Thus, Claims 1-9, 11-20 and 22-27 are currently under examination.

### **Objections**

The Examiner has advised Applicant that should claim 22 and claim 25 are substantial duplicates. Applicant has accordingly canceled claim 22 herein.

### **Withdrawal Rejection Under 35 U.S.C. §102(a)**

Applicant acknowledges with thanks the withdrawal of the rejection of claims 1-8, 9-20 and 22-27 on the basis of Schwarz (U.S. Application Publication No. 2003/0236514) (“Schwarz”).

### **Claim Rejection under 35 USC 103(a)—Pinchuk in view of Ruckenstein**

Claims 1-9, 11-20 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchuk et al., US 2002/0107330 (Pinchuk) in view of Ruckenstein et al., WO 00/59968 (Ruckenstein).

For a proper obviousness rejection under 35 U.S.C. 103, the differences between the subject matter sought to be patented and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. 35 U.S.C. §103. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. MPEP 2141. “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007), quoting *In re Kahn*, 441 F.3d 977, 988, (Fed. Cir. 2006). It should be noted that the prior art reference (or references when combined) must teach or suggest all the claimed features. “When determining whether a claim is obvious, an examiner must make ‘a searching comparison of the claimed invention – including all its limitations – with the teaching of the prior art.’ ... Thus, ‘obviousness requires

a suggestion of all limitations in a claim.’ ...” *Ex parte Wada and Murphy*, BPAI Appeal No. 2007-3733, January 14, 2008 (emphasis in original) (citations omitted). In addition, there must be a reasonable expectation of success. See MPEP 2143.02.

According to the Office, Pinchuk discloses an intravascular or intervascular medical device comprising a therapeutic agent-releasing biocompatible block polymer, wherein the polymer is a copolymer that may be linear triblock or branched copolymer, said copolymer comprising elastomeric blocks (specifically, polyolefin blocks) and thermoplastic blocks (specifically, vinyl aromatic blocks or methacrylate blocks), especially poly(methyl methacrylate). Moreover, the copolymer may comprise units that have glass transition temperatures above and below ambient temperature.

The Office notes that Pinchuk does not expressly disclose graft copolymers and turns to Ruckenstein to make up for this deficiency.

Pinchuk, however, is also deficient in another way. As noted by the Examiner, Pinchuk prefers polyolefin blocks as the elastomeric (rubbery) blocks. What the Office apparently fails to notice is that Pinchuk is also silent regarding a rubbery block of rubbery acrylic units such as a poly(alkyl acrylate), poly(haloalkyl acrylate) or poly(cyanoalkyl acrylate) blocks (see claim 13), for example a poly(methyl acrylate) or poly(butyl acrylate) block (see claim 14).

According to the Examiner, Ruckenstein discloses that great attention has been paid to graft copolymers, due to their unique molecular architecture, particular morphology, and increased number of applications. However, even assuming solely for the sake of argument that this is true, Ruckenstein nonetheless does not make up for the above noted deficiencies in Pinchuk.

Accordingly, reconsideration and withdrawal of the rejection of claims 1-9, 11-20 and 22-26 over Pinchuk in view of Ruckenstein is requested.

**Claim Rejection under 35 USC 103(a)—Pinchuk in view of Ruckenstein and Williams**

Claims 8 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pinchuk and Ruckenstein in view of Williams (U.S. 6,514,515). Applicant respectfully traverses these rejections.

As noted above, claim 1 is patentable over Pinchuk and Ruckenstein at least in that two references do not render obvious a graft copolymer comprising (i) a rubbery block of rubbery acrylic units and (ii) a hard block of hard units. Williams, which is cited for its alleged

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teachings regarding an elongation at break of at least 25% at ambient temperature, does not make up for the foregoing deficiencies in Pinchuk and Ruckenstein.

Accordingly, reconsideration and withdrawal of the rejection of claims 8 and 27 over Pinchuk in view of Ruckenstein is requested.

### **Double Patenting**

Claims 1-9, 11-20 and 22-27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. 7,357,940.

Applicant hereby attaches a terminal disclaimer which is believed to overcome the nonstatutory obviousness-type double patenting rejection.

### **Conclusion**

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (703) 433-0510 in order to resolve any outstanding issues.

Respectfully submitted,

/David B. Bonham/

David B. Bonham  
Registration No. 34,297

Dated: April 5, 2010  
Attorney for Applicant  
Mayer & Williams, PC  
251 North Avenue West, 2<sup>nd</sup> Floor  
Westfield, NJ 07090  
Tel.: 703-433-0510  
Fax: 703-433-2362